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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT TACOMA

13 CECIL DUDGEON,

14 Plaintiff,

15 v.

16 DR. HENRY RICHARDS *et al.*,

17 Defendants.  
18

CASE NO. C09-5200RBL/JRC

ORDER ON PENDING  
MOTIONS

19 This 42 U.S.C. § 1983 action has been referred to the undersigned Magistrate Judge  
20 pursuant to 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates Judges' Rules  
21 MJR 1, MJR 3, and MJR 4. The matter is before the Court on Defendant's Motion to Dismiss  
22 (Dkt. # 14). Plaintiff has responded and agrees that the complaint he submitted is deficient (Dkt.  
23 # 17). In the response plaintiff asks for leave to file an amended complaint. Defendants replied  
24 (Dkt. # 21).  
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26 The Ninth Circuit has repeatedly stated that dismissal of a complaint without giving the  
plaintiff the opportunity to amend is reversible error unless amendment could not cure the defect.

1 “Assuming a substantive or jurisdictional defect in the pleadings, ‘[d]ismissal without leave to  
2 amend is proper only if it is clear, upon de novo review, that the complaint could not be saved by  
3 any amendment.” Swartz v. KPMG LLP, 476 F.3d 756 (9th Cir. 2007).

4 The Court is not sure that amendment can cure the defects in the complaint, but,  
5 plaintiff’s request to file an amended complaint is **GRANTED**. Plaintiff will have until  
6 September 4, 2009 to file his amended complaint. After review of the amended complaint,  
7 defendants may re-note their Motion to Dismiss, or they may file any other motion or answer  
8 they deem appropriate. No discovery will be allowed until the Court has a viable complaint  
9 before it.

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11 The Clerk of Court is directed to note the September 4, 2009, due date and remove the  
12 Motion to Dismiss, (Dkt. # 14), from the Court’s calendar.

13 Dated this 10<sup>th</sup> day of August, 2009.

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17 J. Richard Creatura  
18 United States Magistrate Judge  
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